

The following is the PDF of an official transcript. Official transcripts may only be filed in CM/ECF by the Official Court Reporter and will be restricted in CM/ECF for a period of 90 days. You may cite to a portion of the attached transcript by the docket entry number, referencing page and line number, only after the Court Reporter has filed the official transcript; however, you are prohibited from attaching a full or partial transcript to any document filed with the Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, ET AL.,	:	
	:	
PLAINTIFFS,	:	
vs.	:	DOCKET NUMBER
	:	1:17-CV-2989-AT
BRAD RAFFENSPERGER, ET AL.,	:	
	:	
DEFENDANTS.	:	

TRANSCRIPT OF TELEPHONE CONFERENCE PROCEEDINGS

BEFORE THE HONORABLE AMY TOTENBERG

UNITED STATES DISTRICT SENIOR JUDGE

MARCH 11, 2022

3:36 P.M.

MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED

TRANSCRIPT PRODUCED BY:

OFFICIAL COURT REPORTER:	SHANNON R. WELCH, RMR, CRR
	2394 UNITED STATES COURTHOUSE
	75 TED TURNER DRIVE, SOUTHWEST
	ATLANTA, GEORGIA 30303
	(404) 215-1383

A P P E A R A N C E S O F C O U N S E L

**FOR THE PLAINTIFFS DONNA CURLING, DONNA PRICE, JEFFREY
SCHOENBERG:**

DAVID D. CROSS
ZACHARY D. FUCHS
MORRISON & FOERSTER, LLP

ADAM M. SPARKS
HALSEY G. KNAPP
KREVOLIN & HORST, LLC

**FOR THE PLAINTIFFS COALITION FOR GOOD GOVERNANCE, LAURA DIGGES,
WILLIAM DIGGES, III, AND RICARDO DAVIS:**

BRUCE BROWN
BRUCE P. BROWN LAW

ROBERT ALEXANDER McGUIRE, III
ROBERT McGUIRE LAW FIRM

FOR THE STATE OF GEORGIA DEFENDANTS:

VINCENT ROBERT RUSSO, JR.
CAREY A. MILLER
JOSHUA B. BELINFANTE
ALEXANDER F. DENTON
ROBBINS ROSS ALLOY BELINFANTE LITTLEFIELD, LLC

BRYAN P. TYSON
TAYLOR ENGLISH DUMA

FOR THE FULTON COUNTY DEFENDANTS:

DAVID LOWMAN
CHERYL RINGER

P R O C E E D I N G S**(Atlanta, Fulton County, Georgia; March 11, 2022.)**

THE COURT: Good afternoon. This is Judge Totenberg. We're here for a phone conference in Curling v. Raffensperger. That's Case Number 17-CV-2989.

I understand we've got a host of people here. And I don't think I have the names of the people who are going to be speakers. So we have some representatives, some proposed intervenors. And -- but I'm not going to go through everyone's names. They have all been given to Mr. Martin, and he will make sure that they are on the record.

Well, I frankly did not expect to receive a 25-page-or-so memorandum on everyone's joint positions this Friday. I thought I was getting a much simpler document that would simply indicate a relatively limited list of matters to be tackled before you were ready for summary judgment.

Instead, I got a long list of discovery disputes when I had, in fact, resolved a whole range of discovery disputes only a few weeks earlier and -- and, of course, a little bit more discussion but not a lot about the defendants' request for stay. I am not quite sure why the defendants waited up until last week on a Friday evening to make the request. It seemed very belated since you knew you were going to have the Fair Fight trial this spring, whether in March or in April and it was going to take a substantial period of time. So it seems

1 extremely belated to me.

2 But regardless of that, I still have to sort of
3 make -- have the information necessary to know whether we can
4 have a competently presented motion for summary judgment or
5 whether the plaintiffs are opposing the motion for stay. And I
6 know that plaintiffs said you couldn't prepare a brief in the
7 period of time and wanted until next Friday.

8 But as I understand it, next Friday is also
9 essentially the end of -- when the summary judgment motion is
10 due. So this seemed like a -- more than a trifecta of a mess
11 in terms of saying let's wait until Friday but, meanwhile, the
12 plaintiffs are saying -- the defendants are saying we want a
13 stay altogether or we want an extension. So I didn't really
14 feel like it was going to help me address the circumstances
15 here.

16 So let me start by saying there is likely no way
17 today that I can resolve or even address most of the discovery
18 issues that you have put before me. A, it arrived this
19 morning. B, I didn't expect you to give a laundry list of
20 issues. And, C, if we're going to have a summary judgment
21 motion soon and everyone has known about -- known that, I'm not
22 inclined to allow all of the different things that was asked
23 for in terms of extensions or this or that.

24 My approach much more likely would be to say, all
25 right, if there are three items that you need, to identify what

1 those are, two items. And I'm going to look at this more
2 carefully from that perspective.

3 But, really, what I need to address, first and
4 foremost, is this question: Are we going to have a summary
5 judgment motion due on Friday?

6 So without requiring counsel for plaintiffs to, you
7 know, do a superb oral argument about this, just let me -- tell
8 me what you are thinking about this. Because I still didn't
9 get that from the submission.

10 MR. CROSS: Yes, Your Honor. This is David Cross. I
11 can speak for my group.

12 One thing that I think may be helpful for context,
13 since it bears on the summary judgment issue, is the length of
14 the filing I think wasn't helpful to the Court in trying to
15 distill the discovery issues.

16 There actually is only one open discovery issue for
17 the plaintiffs, as I understand it. Bruce will tell me if I'm
18 wrong about that. But I think there's literally only one
19 discrete thing that we have that we were hoping to resolve
20 before summary judgment. Everything else we're fine to just
21 park.

22 THE COURT: You are fine to what? To park, P-A-R-K?

23 MR. CROSS: Yeah, we are fine to park, to table that
24 for later. It is not something that we need to deal with. So
25 there is really this one discrete thing. And there may or may

1 not be a dispute with the State on that.

2 But as to the motion, our position, I guess, is
3 two-fold. One, we do think it is belated. And we think that
4 is an important factor for the Court to consider. This
5 deadline has been long-standing. Everybody has been working
6 towards it. We're now less than a week away from the due date
7 for summary judgment. Presumably the State has drafts well in
8 hand since it has been coming for quite some time and we're now
9 less than a week out. So we don't see a need for it.

10 And the prejudice would be substantial because we
11 have literally scheduled lots of other things in other matters,
12 hearings, filings, family vacations, all sorts of things around
13 this particular schedule.

14 And so pushing that back even by a week or two weeks
15 or three weeks becomes incredibly difficult for the folks on
16 our team. And we are literally at the end of our bandwidth.
17 We have maxed out resources to meet these deadlines, including
18 taking depositions, two this week.

19 I have been doing a lot of the work myself.
20 Ordinarily, we have associates doing a lot of this work. We
21 just don't have the bandwidth. And so we have -- we have
22 planned for this particular schedule. And we would like to
23 keep it.

24 The prejudice point, I think, is also an important
25 point, Your Honor. The State says there is no prejudice. But

1 that ignores the relief we're looking for, which is our view --
2 and I understand the State disagrees. But our view is that
3 every time our clients have to vote in the current system their
4 constitutional right is violated. And that is what we need to
5 get resolved at least as to the standing issue by the Court.

6 And so if we push it off, that means they are going
7 not just through a primary that is upcoming -- and I don't
8 think any of us are delusional to think we'll have relief
9 before then.

10 But if we put it off even by a little bit, a month or
11 two months, then we're now pushing up against critically
12 important midterm elections. And we think when Your Honor sees
13 the record that has developed, particularly in the depositions
14 in recent weeks, we're not going to have an issue on standing
15 and we're not going to have an issue on the merits. And we'll
16 be in a position to get relief for the upcoming elections. And
17 any delay puts us into a *Purcell* world again.

18 And the reality is the history of this case has been
19 every time we have litigated this case in a substantive fashion
20 on the preliminary injunctions we have always been on the cusp
21 of a major election cycle and the argument we always face is
22 the same. Nothing can be done, Judge, because we're on the
23 cusp of an election cycle. And we don't want to run into that
24 again.

25 So we think everybody has been working towards this

1 deadline. Your Honor was unequivocal in our last hearing that
2 there would be no further extensions. I don't think you could
3 have been any clearer about that. We have worked hard to hold
4 it. And I say Your Honor should hold to that and keep the
5 dates and let's get this case resolved one way or the other.

6 MR. BROWN: Your Honor, this is Bruce --

7 THE COURT: Go ahead.

8 MR. BROWN: Your Honor, this is Bruce Brown. I would
9 echo everything that Mr. Cross said. The Coalition plaintiffs
10 have indicated that we would agree to a seven-day extension
11 just basically as a professional courtesy if they are having
12 staffing issues.

13 However, we would underscore what Mr. Cross said
14 about bandwidth. We have been running on fumes or running on
15 empty for a while. And so it is very difficult for us to
16 continue with an extension of the motion for summary judgment
17 period.

18 And we think that the State's reasons for needing an
19 extension are not overwhelming. This is a motion for summary
20 judgment. It is extremely unlikely that any other discovery
21 that they may need would eliminate any issue of material fact,
22 particularly on the issues that are likely to be before Your
23 Honor. And so we would concur with Mr. Cross on that.

24 We have a different view on the stay mainly because
25 if the case is stayed then we can catch our breath in terms of

1 resources. But if we have a stay or if there is an extension,
2 Your Honor, we would ask that the consideration of our motion
3 for attorneys' fees not be stayed and not -- and be considered.
4 Because as the case goes on, the hardship of that not being
5 addressed increases and it just makes us -- it frankly makes it
6 very difficult for us to continue.

7 So that is what we would add to Mr. Cross' statement.
8 Thank you.

9 THE COURT: Mr. Brown, is your client not opposing a
10 stay?

11 MR. BROWN: We do not oppose a stay provided -- with
12 a couple of important provisos. One is that it is immediate.
13 In other words, that the State doesn't continue to churn for a
14 couple -- two more weeks in discovery, Number 1. Number 2,
15 that the stay would not include a consideration of our fees,
16 that that is something the Court would consider.

17 We would also encourage the State -- we would oppose
18 a long stay, that is, a stay of more than, say, six weeks,
19 unless the State agreed to use something other than the BMDs
20 until CISA has finished their review. Our view is that --

21 THE COURT: I'm sorry. The condition you are saying
22 if it wouldn't last more than six weeks approximately and what
23 about the BMDs?

24 MR. BROWN: Well, we would agree to a longer stay if
25 the State would agree to not use the BMDs while CISA is

1 considering whether and if there is a mitigation for the newest
2 of the vulnerabilities with the system is in danger of.

3 COURT REPORTER: I'm sorry. Is what? The very last
4 words, Mr. Brown?

5 MR. BROWN: I didn't say it very well. But just the
6 newest vulnerability that it is subject to.

7 Thank you, Ms. Welch.

8 THE COURT: Let me go back then and make sure I
9 understand Mr. Cross' position on behalf of Ms. Curling and her
10 co-plaintiffs about the stay in particular.

11 You are opposing it, or do you have a position that
12 is consistent with Mr. Brown?

13 MR. CROSS: We oppose the stay, Your Honor.

14 THE COURT: And then another point of clarification
15 is: It appeared to me that the Coalition was saying if you
16 have a stay you want some extra time to do more discovery
17 still; whereas, I don't know whether, Mr. Cross, you are
18 looking for more discovery because you mentioned one open
19 issue.

20 But let me first ask, Mr. Brown.

21 MR. BROWN: Yes. Thank you, Your Honor.

22 THE COURT: What are you thinking you're trying to --
23 if I were to grant a stay, for instance, to a date that is post
24 the completion of the Fair Fight trial, which is roughly the
25 six weeks that you're talking about but it actually might still

1 be in the middle of Fair Fight for all I know because that
2 trial is not supposed to begin until the middle of April and it
3 is supposed to last approximately a month --

4 MR. BROWN: Your Honor, we would -- the way we look
5 at the discovery is sort of two phases. We agree with Mr.
6 Cross that prior to a motion for summary judgment that we do
7 not need additional discovery and we would not -- it would be
8 inconsistent with an agreement for a stay to be subject to
9 discovery from the State defendants.

10 And so -- however, one reason why the submission that
11 we made was longer than we wanted it to be or that you wanted
12 to see, quite frankly, is that we wanted also to anticipate
13 what might happen after the motion for summary judgment.

14 So what we did was both Curling and Coalition
15 plaintiffs sort of stepped back and said, wait a minute, we
16 don't need all of this right now. We can deal with some of
17 this if the motion for summary judgment is denied.

18 And so that's part of what you are seeing is that
19 separation into phases.

20 THE COURT: So do you anticipate you're going to
21 file -- I'm seeing cross-motions for summary judgment? Is that
22 your anticipation?

23 MR. BROWN: I don't know if Mr. Cross -- I don't
24 think so, Your Honor.

25 THE COURT: Okay. And are you anticipating the

1 motion will be solely about standing or about something broader
2 than standing?

3 MR. BROWN: Our anticipation -- right. We have
4 jaw-boned this a little bit with the State defendants. And
5 they have pushed back on my suggestion that the only thing they
6 have now is standing, and they have resisted that it is only
7 going to be for standing.

8 Now, what they will say, Your Honor, is that -- is
9 that the motion for summary judgment consideration will be
10 tentative until the Eleventh Circuit rules. And I think
11 Curling and the Coalition plaintiffs would push back as
12 strongly as we can on that suggestion. Because then the case
13 will never be litigated -- will never get done. And we
14 disagree with that being the case in light of the issues that
15 are actually in front of the Eleventh Circuit.

16 So we don't think the Eleventh Circuit is any reason
17 that Your Honor should not continue pushing this case along and
18 that it would be a mistake to do so and the State's reasoning
19 on that we do not find persuasive.

20 MR. CROSS: Your Honor, this is David Cross. Just
21 briefly, if I may.

22 Our understanding has always been summary judgment
23 was going to be limited to standing. And that was a big driver
24 of having abbreviated discovery. And we have tried really hard
25 to comply with that.

1 We have really narrowed our focus on Dr. Halderman's
2 report, on specific vulnerabilities with the system, specific
3 evidence of particular potential compromises, and then the
4 physical security measures that the State has pointed to as a
5 response to Dr. Halderman's report.

6 And I think it would be prejudicial if the State were
7 now to come in and say they are going to brief the full merits
8 of the case for summary judgment when each time we've asked for
9 broader discovery they have always responded no, no, no, this
10 is only abbreviated discovery for the narrow purpose of
11 addressing standing.

12 So to Bruce's point, we're willing, for example,
13 right now not to pursue Rule 30(b)(6) testimony of witnesses
14 that would be knowledgeable. Because as we understand it, the
15 only thing that is going to get litigated now is standing. And
16 we're comfortable with the record the way it is, as long as the
17 State is precluded from putting in evidence that should have
18 come out in the depositions.

19 But if they are going to come forward and say we want
20 to brief the whole case, then things get more complicated
21 because we had understood that has never been where the Court
22 was going and where we were going.

23 MR. MILLER: Your Honor, this is Carey Miller on
24 behalf of the State. If I may.

25 THE COURT: Yes.

1 MR. MILLER: I do want to just briefly address that
2 last point because it is respectfully a complete 180 from where
3 I thought this whole thing had been heading.

4 The plaintiffs are correct. We have repeatedly
5 requested that this be limited to standing, raised the concept
6 of a summary judgment limited to standing. But our
7 understanding is that we had moved well beyond that.

8 In fact, at the January 27, 2022, conference, I
9 specifically made clear in response to, I believe, a statement
10 by one of the plaintiffs' counsel assuming that we were moving
11 only on standing -- on Page 74 of the transcript, I stated,
12 Your Honor, I do just want to make clear to the Court -- this
13 is Carey Miller -- we will not be moving for summary judgment
14 limited purely to standing issues.

15 That has simply never been the case. Your Honor, we
16 have urged this Court throughout that standing should be of the
17 top import. As we understood from our November conference, the
18 Court agreed with that but that no limitation had been imposed
19 in terms of what would be at issue as we approached summary
20 judgment.

21 And, Your Honor -- if Your Honor will indulge me, I
22 do want to just respond briefly to a few of the points that
23 were raised since we've gotten on the call.

24 THE COURT: Go ahead.

25 MR. MILLER: With respect to the timeliness of the

1 motion, I want to raise a few different things that frankly
2 have thrown the schedule a new wrench that we did not
3 anticipate.

4 As a starting point, when the current schedule was
5 set, the Fair Fight trial was scheduled to be held in mid
6 February. That was changed in mid to late January upon the
7 omicron variant sort of coming into the state and in an
8 abundance of caution by the Court and the parties. At that
9 point, it was moved to April and May.

10 Given the amount of resources the State has expended
11 in this case, the -- I cannot recall who. I believe Mr. Brown
12 spoke to running on empty. But we are in the same boat. We
13 have offered up our clients for over 40 hours of deposition
14 testimony. Just our clients and former employees.

15 We've proceeded along and tried to tease out at every
16 step of the turn the remaining discovery that was needed. One
17 of the plaintiffs' depositions was not taken until this week.
18 I don't mean to, you know, imply any nefarious reason for that.
19 It was simply personal reasons that caused an issue. We still
20 don't have a transcript for that deposition.

21 Multiple other depositions were delayed at the
22 plaintiffs' request on multiple occasions. And since the time
23 of the initial schedule, we also received the setting of our
24 oral argument date in the Eleventh Circuit.

25 And, Your Honor, when we were at the point in May of

1 last year, we had no concept as to when the appeals in the
2 Eleventh Circuit would even approach resolution. I don't mean
3 to imply that we're going to know when the oral argument is set
4 that we're going to get an order from the bench by the Eleventh
5 Circuit. That certainly won't be the case.

6 But we now have gotten to the point where discovery
7 has gone on so long at plaintiffs' insisting because they were
8 unsatisfied with the voluminous documents produced and the
9 amount of deposition testimony in this case that we now are
10 beginning to encroach upon a time period we can expect the
11 Eleventh Circuit to rule.

12 And with respect to the issues that are bound up in
13 the appeals, we don't know for certain whether the Eleventh
14 Circuit is going to address standing but we have raised it. We
15 do, however, have reason to believe that it is very likely that
16 the Eleventh Circuit will address the application of
17 Anderson-Burdick to the claims in this case. The Eleventh
18 Circuit has already done so with a motions panel opinion when
19 Coalition plaintiffs sought to lift the stay that had been
20 imposed.

21 Your Honor, the case cited in our brief, the
22 *Miccosukee Tribe of Indians v. South Water Management District*
23 is very clear as to the efficiencies gained by a stay of this
24 sort. The Eleventh Circuit said not only is a good reason, it
25 may, in fact, be an excellent one, to stay the case to await a

1 federal appellate decision that is likely to have a substantial
2 or controlling effect on the claims and issues in the stayed
3 case.

4 And, of course, most of the time when these concepts
5 come up, it is typically not within the same case. We are
6 beyond likely to have a substantial or controlling effect --
7 extremely likely, if not nearly certain, with an opinion from
8 the Eleventh Circuit.

9 And all of this is to say I understand the
10 plaintiffs' position on wanting to get ahead of the Eleventh
11 Circuit right now. However, regardless, we're going to be in a
12 position where we're engaging in this exercise all over again
13 once the Eleventh Circuit rules.

14 So in other words --

15 THE COURT: You know, that could be -- it could be
16 June. It could be June next year.

17 MR. MILLER: That's correct, Your Honor. That's
18 absolutely correct.

19 And at that point in time, presumably supplemental
20 briefing will be required. Who knows if additional discovery
21 will be requested.

22 But, Your Honor, all that is to say -- one thing that
23 I heard earlier is with respect to staying the case
24 immediately. The State defendants don't oppose that as long as
25 when we're -- when the stay is lifted that we are able to

1 obtain the 30(b)(6) deposition of Coalition for Good
2 Governance.

3 And lastly, Your Honor --

4 THE COURT: Wait a second. So you don't oppose
5 having a temporary stay? I mean, that is -- that is what
6 Mr. Brown was proposing was a temporary.

7 You don't oppose that?

8 MR. MILLER: Not out of hand, Your Honor. The time
9 period that Mr. Brown suggested is still going to put us in the
10 middle of the Fair Fight trial so that that is the one
11 difficulty. But except assuming that can be worked around, we
12 don't necessarily oppose a temporary stay.

13 We do, however, believe that doing so is again going
14 to create inefficiencies because the parties are going to have
15 to come back to you and brief the issues.

16 And, Your Honor, of course, the elephant in the room
17 here continues to be whatever CISA's process is at this
18 point -- who knows -- we don't know when that will arrive. I
19 suspect CISA, you know, is not focused solely on this case.

20 And I presume that depending on what CISA says you
21 may have a preliminary injunction in front of you very, very
22 quickly, which will again eliminate the benefit of moving
23 forward into summary judgment at this juncture.

24 And finally, Your Honor, I do want to note, you know,
25 briefly -- and, respectfully, I wish I didn't have to. But the

1 State defendants need to raise the issue concerning the
2 time-sensitive issue and communications with staff at the
3 court.

4 THE COURT: Well, I will address that separately but
5 not today.

6 MR. MILLER: Okay. Thank you, Your Honor.

7 THE COURT: And I am not -- you know, I really feel
8 like that it has been raised in a way that is not suitable for
9 this. But I will address it.

10 But I'm not sure that you answered the question of
11 why did the State not move for a stay then or move for
12 consideration of its schedule when the Fair Fight case was
13 being rescheduled.

14 I mean, it was rescheduled before February when it
15 was scheduled. Obviously, you knew before then. So that is --
16 I don't think you have responded to that.

17 MR. MILLER: Your Honor -- and that was to the first
18 point as to the number of depositions that have been delayed in
19 discovery in this case at plaintiffs' request for the purpose
20 of getting to summary judgment.

21 At this juncture, even if I wanted to move for
22 summary judgment today, I wouldn't have a deposition transcript
23 for Ms. Price. I have a rough transcript. However, what we
24 have seen in this case is I would expect an errata sheet from
25 Ms. Price.

1 So, Your Honor, given the delay in the depositions,
2 our inability to take the deposition of the Coalition for Good
3 Governance, we're just simply unable to do so at this juncture.
4 I wish we could have done it earlier. But I continued to
5 believe that we could push through and get this thing done
6 because frankly, Your Honor, we want to be done with this.

7 MR. CROSS: Your Honor, this is David Cross. Could
8 I --

9 THE COURT: Yes.

10 MR. CROSS: I guess a couple of points.

11 Just to pick up on the last one, I'm not sure what
12 Mr. Miller means when he says that a number of the depositions
13 were delayed at plaintiffs' request.

14 All of the depositions were completed last month
15 except for Mr. Beaver. That one was delayed because we had to
16 wait for the Fortalice documents and then we had to get him
17 scheduled. That was a short deposition that occurred
18 yesterday. And there could have been no revelations to the
19 defendants since that is their own witness and their own
20 reports.

21 Mr. Sterling was delayed later in February at the
22 State's request, not ours. And so I'm just not sure what he's
23 referring to.

24 The prior --

25 MR. MILLER: David, I'll correct you right there.

1 (Unintelligible cross-talk)

2 MR. CROSS: Hold on, Mr. Miller. Mr. Miller, please
3 stop.

4 The depositions were mostly done in January and -- or
5 maybe early -- mostly were done in January, some in early
6 February.

7 So the idea that depositions of any deponent warrants
8 an extension, I think, just doesn't hold. And we weren't the
9 ones urging those except weeks ago, weeks ago.

10 As to Ms. Price, the State can get a copy of her
11 transcript anytime they want. They just have to ask the court
12 reporter. Court reporters can turn them around in a day. The
13 entire deposition lasted about three or four hours. And there
14 were no new revelations in that.

15 And it was -- when we scheduled that, when we offered
16 March 8th to the State, we pointed out it would be about a week
17 and a half before their motion was due. I have looked back in
18 the correspondence. I don't have anything from them saying,
19 that is too late, we would need more time. And it is hard to
20 believe that that short deposition could warrant more time.

21 On the appeal, we've heard this point before that
22 they expect the Court of Appeals to say Anderson-Burdick
23 doesn't apply and that the order that came out of the motions
24 panel suggest that. There is no reading of that order that can
25 support that, Your Honor. I have read it multiple times in the

1 last couple of days because we heard this yesterday. I have it
2 in front of me.

3 All the motions panel said about Anderson-Burdick is
4 a question whether the Anderson-Burdick standard was satisfied
5 on the discrete question of the paper pollbook relief. It does
6 not suggest in any way that the Eleventh Circuit thinks the
7 Anderson-Burdick standard does not apply. It does not address
8 it in the broader context of the relief in this case.

9 And importantly, Your Honor, while the motions
10 panel -- two of the judges felt the need to write something,
11 they specifically did not suggest there is no standing here
12 either. They went as far as to suggest that they thought the
13 Court may have erred in finding the standard was satisfied on
14 the paper pollbook and that is it.

15 And there is nothing to suggest that the Eleventh
16 Circuit is going to suddenly weigh in on standing. The last
17 time we were before them in this case the State also made
18 standing arguments, essentially the same arguments. And that
19 appeal was dismissed as frivolous.

20 And to Your Honor's point, even if we thought for
21 some reason there might be a standing guidance, that could be a
22 year away. And that is why courts generally don't stay cases
23 for the purpose of an appeal, particularly here where the
24 appeal, as the State has pointed out, only involves the
25 Coalition relief as the position they have taken with the

1 Eleventh Circuit.

2 They say we, Curling, shouldn't even be heard at the
3 Eleventh Circuit. And so it has no bearing on our claims, and
4 standing is not properly before them.

5 On the CISA process, Your Honor, I guess the only
6 thing I will say is it is unclear what CISA is going to do. I
7 don't think that is something to wait for from a summary
8 judgment standpoint. I don't think what they do -- it could
9 bear on standing. It may not. We have got a record that we
10 think amply supports it. So Your Honor doesn't need to wait
11 for that. We don't know how long that process will run.

12 When Mr. Miller suggests you could be facing a
13 preliminary injunction motion based on what comes out of CISA
14 it sounds like he's implying that CISA could have a report that
15 validates Dr. Halderman's vulnerabilities and that would prompt
16 us to file for preliminary injunction motion.

17 We fully anticipate CISA will validate and will find
18 that those vulnerabilities are valid. And that is all the more
19 reason for us to move forward now and get this record before
20 Your Honor so the case can proceed to relief.

21 Thank you.

22 MR. MILLER: Your Honor, if I may, just a couple of
23 quick points.

24 Initially, with respect to Mr. Sterling, as I recall,
25 his deposition was originally scheduled in the late part of

1 January, early part of February. I received a call from
2 plaintiffs' counsel requesting that we delay that deposition
3 because at the time we were also dealing with multiple
4 conferences with the Court with respect to this CISA
5 coordinated vulnerability disclosure and a number of other
6 matters that happened to be going on in the case.

7 At that point, it was delayed to February 16, which
8 we then ran into the issue of Mr. Sterling having oral surgery
9 that was apparently required on a time-sensitive basis. That
10 is the process behind Mr. Sterling's deposition. It should
11 have been concluded in the first week of February.

12 With respect to Ms. Price, Mr. Cross is correct. We
13 did, in fact, request that Ms. Price's deposition be held no
14 later than March the 4th so that we could adequately turn
15 around and prepare for summary judgment.

16 What subsequently happened is the response I got back
17 from Mr. Cross was March 8th. At that point, I just needed to
18 confirm the deposition so that we could get it done. I didn't
19 think we would be in a position to go to the Court, ask for
20 relief on an expedited basis to demand a deposition that had
21 been delayed for personal reasons to be conducted sooner than,
22 as we understood it, Ms. Price may be healthy enough to provide
23 deposition testimony.

24 Your Honor, with respect to the point on
25 Anderson-Burdick, my point is not that Anderson-Burdick does

1 not apply. In fact, the motions panel opinion in the New
2 Georgia Project case was very clear that Anderson-Burdick
3 applies to burdens on the right to vote.

4 My point was elucidating the proper application of
5 the Anderson-Burdick framework. And that is what the motions
6 panel -- the two judges concurring on the motions panel
7 expressed therein, which would simply to be effective voting
8 systems do not impose a severe burden solely because they are
9 electronic. And that was citing to the *Wechsler* case that we
10 have discussed on multiple occasions.

11 And, in fact, the Court found that there is a
12 likelihood of success on the merits with respect to application
13 of the Anderson-Burdick framework. So that is the point of
14 clarification on Anderson-Burdick.

15 The State defendants do not dispute that
16 Anderson-Burdick applies. It would be a little bit odd for me
17 to say so, frankly.

18 THE COURT: Okay. So the other thing, Mr. Miller and
19 Mr. Brown, related to the 30(b)(6) deposition -- and,
20 Mr. Brown, you indicated that you basically felt like you had
21 offered enough dates and that the State had not taken advantage
22 of those dates and therefore they had effectively waived their
23 right to take the deposition?

24 MR. BROWN: Yes, Your Honor. At the beginning of
25 February -- that's correct, Your Honor.

1 At the beginning of February, the State had dates
2 from us. We said that we would produce Ms. Marks any day in
3 February. And we -- you know, they had the summary judgment
4 motion deadline looking at them right in the face on
5 February 1st. And they decided not to take her deposition at
6 any day in February.

7 And the first time I got actual dates from them was
8 yesterday. And our view is that, you know, whatever came -- we
9 can talk all day about what came before January, December, all
10 the way back to 2019, 2018.

11 But this is a deposition on standing. The motion has
12 been set forever. And we're sort of at our -- we're at --
13 we're at a loss as to why the State should be given a break on
14 this, frankly.

15 MR. MILLER: Your Honor, I can briefly respond to
16 that. The deposition of the Coalition for Good Governance was
17 originally scheduled to be held on October the 4th of 2021.
18 That deposition was delayed at Coalition plaintiffs' request so
19 that they could complete document productions.

20 On February 2nd, I requested a confirmation as to
21 document productions that had been ordered by the Court in the
22 January 27 conference. I received no response to that until a
23 co-counsel of mine re-raised the issue again. And we received
24 that response on March 3, I believe.

25 Your Honor, setting all that aside --

1 THE COURT: All right. Whoa, whoa, whoa. So what
2 you got was there was a supplementation or you have never
3 gotten any documents? Or -- I don't know -- I'm having a
4 little bit of trouble understanding what you received on
5 March 3rd that you say -- or your co-counsel got.

6 MR. MILLER: Yes, Your Honor. I was actually trying
7 to pull up my message just now.

8 MR. BROWN: I'll tell you, Your Honor --

9 MR. MILLER: Your Honor --

10 **(Unintelligible cross-talk)**

11 THE COURT: Just let Mr. Miller continue. And then,
12 Mr. Brown, I'll let you respond afterwards.

13 MR. BROWN: Sure.

14 THE COURT: Go ahead, Mr. Miller.

15 MR. MILLER: So, Your Honor, in the January 27
16 conference, one of the issues that was addressed there, amongst
17 others, was the State defendants' discovery dispute with the
18 Coalition plaintiffs.

19 Part of that also included the interrogatory to the
20 Coalition plaintiffs for identification of those on which they
21 will rely upon for standing. That discovery dispute states --
22 the initial one is at Doc. 1245. Because of the lack of
23 response, it ended up extending to multiple documents for
24 response and then replies.

25 But shortly thereafter on February 2 -- excuse me --

1 yeah, February 2, late that evening, we received a supplemental
2 production, an interrogatory response that identified
3 individuals for associational standing, and notice that
4 additional documents would be produced, which included a
5 response to a handful of the items addressed in the conference.

6 I posed four questions to Mr. Brown at that time,
7 which were -- and simply requested that we put this issue to
8 bed so that we could move forward.

9 I asked him on Request Number 3 and Request
10 Number 9 -- we appeared to be missing some documents with
11 respect to particular individuals that the Court ordered
12 production.

13 The second point being the Court ordered production
14 for response -- documents that were responsive to our Request
15 Number 4. Your Honor, that Request Number 4 sought multiple --
16 sought documents related to the issue that we are not
17 addressing today.

18 Request Number 8 sought documents that were
19 specifically targeted to the membership concept of the
20 Coalition for Good Governance. That request sought documents
21 that were reflective of obligations or benefits of membership.

22 In the response to the request, Mr. Brown stated that
23 he would produce those documents. And that is at Docket 1257.
24 I'm not aware that we ever received such a production at least
25 not since the time of Docket 1257.

1 Finally, we again requested another discovery item
2 that has been raised at different times. It is not essential
3 to summary judgment but raises some problems particularly in
4 light of certain items that were not produced and used for
5 questioning of our clients, which was we still have not
6 received a privilege log from the Coalition for Good Governance
7 despite multiple references to privilege.

8 At this point, I'm not seeking to hang my hat on a
9 privilege log when we're at this late stage of the discovery.
10 We want to move forward. That was what I expressed on
11 February 3, and I got no response.

12 And finally, Your Honor, with respect to this
13 deposition, had it gone forward in October of 2021 as
14 originally noticed, an individual who is no longer with our
15 team, Mr. Dal Burton, would have been taking that deposition.
16 Had been prepared to take it. Had been doing all the leg work
17 on it.

18 Mr. Burton transitioned out of the Taylor English law
19 firm at the end of January. And at the same time, Mr. Tyson
20 and his team were enmeshed in a preliminary injunction hearing
21 in the redistricting cases in front of Judge Jones. So we
22 simply ran into some difficulty with manpower. We completely
23 understand the plaintiffs' concern that the parties are running
24 on fumes to that respect.

25 So, Your Honor, that is where we are on the 30(b)(6)

1 deposition. Frankly, I regret that we didn't just move forward
2 on October 4 despite the document production because it has
3 just continued and continued to cause issues.

4 MR. BROWN: Your Honor, very briefly. Mr. Miller's
5 account is wrong and then wrong again. It is wrong that we
6 didn't produce documents in response to their question. And it
7 is so trivial it is -- I hate to even burden the Court.

8 The defendants are basing their need for delay upon
9 an interrogatory that asks for the Coalition's internal
10 policies for admitting members and fees, that sort of thing.

11 And they wrote me and said, you didn't produce this.
12 And I wrote back and said, no. We did produce it. Here is the
13 Bates number. It is under the name Rocky Mountain Foundation,
14 which is the Coalition's former name. And that is all we have.

15 So that is the first time that Mr. Miller was wrong.
16 We had produced it. And it was trivial in any event.

17 Second, in terms of the mysterious issue that we --
18 the issue that we'll not address today, I did produce it. And
19 it was a one-page email -- not even one page. It was a
20 one-sentence email from me to Mr. Cross, which I said, look,
21 that is subject to the common defense privilege but it is so
22 laughably immaterial that I would produce it. And I did
23 produce it. I told Mr. Miller I would. And I did.

24 So the fact is now they may have run out of resources
25 to take Ms. Marks' deposition. But they are coming to the

1 Court for an extension. And, you know, if we go back -- if
2 they want to go back, we'll go back to when they should have
3 been taking these depositions. And that is when they were
4 noticing Ebenezer Baptist Church, ACLU, Fair Fight, which was
5 their first round of depositions.

6 And if you want to talk about using up resources,
7 that -- we had the Lawyers' Committee back then. The Lawyers'
8 Committee is long gone because they had to spend their
9 resources uncompensated defending frivolous discovery, like the
10 defendants' discovery of Ebenezer Baptist Church, one of their
11 first notices out the door.

12 They didn't notice us on standing. They weren't
13 preparing for summary judgment then. They were -- they were
14 doing a very effective job of sapping our resources. And that
15 is work. They have. But they shouldn't get a cookie for it
16 with some break on a deadline that has been long in place.

17 MR. MILLER: Your Honor, Mr. Brown is correct that he
18 did respond to my email and confirm my questions. That
19 response came a month after I requested the information.

20 With respect to discovery we sought in 2019 during
21 the abbreviated period leading up to the 2019 preliminary
22 injunction motion, I don't know that any of that is at issue
23 now. In fact, as I distinctly recall, the plaintiffs at that
24 time were taking the position that had we sought to depose
25 anybody it would be our one and only shot to depose them. So

1 I'm not sure how that really plays into any of this at all.

2 Your Honor, with respect to the timing again of the
3 stay, you know, one other item was mentioned in our briefing.
4 But we frankly were discussing this concept of a stay with the
5 only party to this case that we thought, you know, were
6 properly parties on the appeal.

7 We didn't come to an agreement, which is fine. But
8 that is where we are preceding our filing of the motion on the
9 4th.

10 THE COURT: Mr. Brown and Mr. Miller, are you
11 prepared to have Ms. Marks' deposition in early -- early next
12 week?

13 MR. MILLER: Your Honor --

14 MR. BROWN: Your Honor --

15 MR. MILLER: -- this is Carey Miller. The State is
16 prepared to move forward on the 17th or 18th when we discussed
17 this on meet-and-conferal yesterday. We understood it would
18 go forward on one of those dates but that the Coalition
19 plaintiffs may need to confirm the availability of their
20 counsel.

21 MR. BROWN: Your Honor, if it is your direction,
22 we're available on the 17th, not on the 18th, for Ms. Marks'
23 deposition.

24 MR. MILLER: That would be suitable for the State,
25 Your Honor.

1 THE COURT: Mr. Brown and Mr. Cross, Mr. Brown
2 mentioned he would as a matter of professional courtesy, if I
3 understood correctly, agree to an additional week before the
4 motion for summary judgment would be due.

5 Did you have an opportunity to -- Mr. Brown, to talk
6 with Mr. Cross about that? Because if you haven't really had
7 an opportunity to talk about it, I would just simply go off --
8 let you go offline to discuss whether -- his view about that.

9 MR. BROWN: We have not spoken about that issue
10 directly, Your Honor.

11 THE COURT: All right. Well, why don't you-all
12 talk -- if you have another -- you can tap back into this. And
13 I'm going to go offline for a few minutes.

14 MR. CROSS: Your Honor --

15 THE COURT: Yes.

16 MR. CROSS: -- sorry. This is David Cross. I can
17 actually speak to that quickly.

18 We saw that when they sent us their portion of the
19 draft. The problem with a week extension is it puts us getting
20 the State's brief in the middle of me being out of the country
21 for a week, which is particularly problematic. If we had to do
22 it, we would try to make it work. But that is why we didn't
23 agree. Like I said, we have scheduled -- we scheduled things
24 around this particular date.

25 The only other couple of points I wanted to make just

1 briefly, if I could is: One, I do want to make clear there is
2 no outstanding discovery as to my clients, as I understand it.
3 Ms. Price has done, like I said, a few days ago a short
4 deposition, which for some reason mostly focused on DREs again,
5 which I don't quite get. But there's no outstanding discovery
6 to us.

7 And so it would be prejudicial to our clients, I
8 would respectfully submit, Your Honor, to have things drag out,
9 deal with extended dates when we have worked hard to comply
10 with the deadlines and everything they are talking about deals
11 only with the Coalition.

12 And I am not in any way suggesting the Coalition -- I
13 think they have also worked really hard. And the delinquency
14 is on the State's side. And I won't repeat Mr. Brown's
15 arguments.

16 But as he said, I don't think they should get a
17 cookie for having stalled on that. I don't want to see my
18 clients prejudiced for stuff that has nothing to do with us.

19 And if you push out the Coalition -- if you allow the
20 Coalition deposition, then that means presumably you're going
21 to have to move the March 17 filing date. And that is when we
22 start to end up with my travel schedule and all --

23 **(Unintelligible cross-talk)**

24 THE COURT: Mr. Miller, do you anticipate having
25 different sections of your brief dealing with the Coalition and

1 dealing with the Curling plaintiffs?

2 MR. MILLER: Yes, Your Honor. I certainly anticipate
3 we would have different sections, if not two separate motions,
4 dealing with both of their individual complaints and claims in
5 this case.

6 And, Your Honor, I do want to note that discovery in
7 this case has been extended on three different occasions. Each
8 time the State has opposed it. And each time it was at the
9 plaintiffs' request.

10 So, Your Honor, I recognize we're all trying to get
11 this done. I truly think that all the parties do want to have
12 this done. That becomes a difficulty of -- I think as we wrote
13 in our brief, ordinarily we would simply ask the Court for, you
14 know, maybe one or two weeks. That just continues to put us
15 right into the middle of the Fair Fight trial, which I guess
16 we'll take a break from to brief our reply.

17 And, Your Honor, on a slightly personal note, I
18 realize that things have been scheduled around this. But I
19 have a conflict in mid May. I'm expecting my first child. So
20 I'm hoping that we avoid that. But I will recognize the
21 Court's need to move forward, and we will have other attorneys
22 able to carry the case forward.

23 THE COURT: Well, first of all, congratulations. And
24 it will be an exciting period of time, and that is wonderful.

25 MR. MILLER: Thank you, Your Honor.

1 MR. CROSS: The current schedule would have us done a
2 month before mid May, Carey. That may be the best thing for
3 you.

4 MR. MILLER: Well, my point was the current schedule
5 would have us done in the midst of the Fair Fight trial, which
6 is a separate and different, distinct conflict.

7 THE COURT: Well, Mr. Miller, I mean, I know all of
8 your names are on -- I checked and saw that most of -- almost
9 all of your names or all the names of counsel here are on the
10 Fair Fight docket.

11 Are any -- are all of you planning to be at the trial
12 all the time as well? Being of counsel doesn't mean that you
13 are going to be at the trial all the time.

14 MR. MILLER: Right. And, Your Honor, we're a little
15 bit, I guess, in terms of scheduling witnesses and things of
16 that nature farther out. But there's one individual on the
17 Fair Fight matter that is not also working on this matter.

18 With respect to our kind of signature block on this
19 matter, there's several folks that are not actively in this
20 case any more, as I think the plaintiffs are aware.

21 But to answer the Court's question, as of right now,
22 myself, Mr. Russo, and Mr. Tyson will -- and Mr. Belinfante
23 will all need to be present throughout the trial, I suspect.

24 THE COURT: And, Mr. Cross, what are you -- when are
25 you going to be out of the country?

1 MR. CROSS: The 18th through whatever the following
2 week -- no. I'm sorry, Your Honor. Next week. So next Friday
3 through the following weekend. So that is why if you push
4 their filing date back it comes in while we're away.

5 Your Honor, it sounds like you were contemplating an
6 idea that maybe they would go ahead and file as to our clients
7 because the record is closed there. It sounds like they may be
8 thinking separate motions.

9 That would be fine. That way, we could get started
10 on ours and I could meet with my team before we leave and get
11 them going. That would be -- that would work well for us.

12 THE COURT: But you're leaving on the 18th or the
13 25th? I'm --

14 MR. CROSS: I'm sorry. We leave -- it is either the
15 18th or the 19th.

16 THE COURT: All right.

17 MR. CROSS: My wife knows the actual travel plans.
18 If they file next Thursday, that gives me time to meet with the
19 team and get them going while I'm out of the country. And that
20 was --

21 THE COURT: How long do you anticipate being gone?

22 MR. CROSS: A week. It is somewhere between seven
23 and nine days.

24 THE COURT: So why would you be adversely affected on
25 this -- I'm a little confused -- if they file the 25th or the

1 26th? You'll be back on the 28th.

2 MR. CROSS: Yes. If they file after I return, then
3 the vacation wouldn't matter. My point was that gets into the
4 other reasons for the prejudice of the delay. So I don't want
5 to see this pushed back to after we return because then we're
6 losing about a week and a half.

7 But if it comes in the middle, it just means I'm not
8 going to be available to get my team going and we're going to
9 lose time to work on it.

10 But you're right. If it is filed after I return,
11 then the travel doesn't affect that. But there are other
12 prejudice for that. That was the point.

13 THE COURT: I mean, the greater concern is, it seems
14 to me, if they file the -- if they file the 25th and you-all
15 aren't doing your motions, then your response is due in 20
16 days?

17 MR. CROSS: I think we have four weeks, if I remember
18 right. Let me just look.

19 MR. BROWN: Yes. Four weeks.

20 THE COURT: Four weeks under your schedule?

21 MR. CROSS: Yes. So that would push us --

22 THE COURT: So then the real -- then we get to
23 April 24th or -- and then they are still in trial then. And
24 they won't be through until the middle of May. So they would
25 end up having to get an extension for their reply brief.

1 But it would be still a problem for them with their
2 reply brief if you get it to them on the 18th because they are
3 just beginning trial then. Yeah.

4 All right. I'm going to get -- I'm going to go
5 offline for a few minutes if there is nothing else that needs
6 to be presented at this moment to think about the schedule and
7 the stay issue. All right?

8 MR. BROWN: Thank you, Your Honor.

9 MR. MILLER: Thank you, Your Honor.

10 MR. CROSS: Thank you, Your Honor.

11 THE COURT: All right.

12 **(A brief break was taken at 4:34 P.M.)**

13 THE COURT: Is the Fair Fight trial beginning on the
14 11th or the 18th?

15 MR. MILLER: I'm sorry, Your Honor. What was that?

16 THE COURT: Is the Fair Fight trial beginning on the
17 11th or the 18th of April?

18 MR. MILLER: It begins on the 11th, Your Honor.

19 THE COURT: Okay. Thank you.

20 What was the date of the oral argument in front of
21 the Eleventh Circuit?

22 MR. MILLER: Yes, Your Honor. The oral argument is
23 on May the 19th, which is a couple of days after the final
24 trial date of May 16th.

25 THE COURT: Okay. Now, is there a reason you think

1 it is the 16th?

2 I mean, I understood from Judge Jones this was a
3 four-and-a-half-week trial. That is why I'm wondering.

4 MR. MILLER: Right. Your Honor, and there is a
5 judicial conference, as we understand, that will be in the
6 midst of the trial. And Judge Jones intends to break for that.

7 Truthfully, Your Honor, we're hoping to limit the
8 trial and be shorter.

9 THE COURT: Okay. All right. Thank you. All right.
10 All right. Thank you.

11 **(A brief break was taken at 4:37 P.M.)**

12 THE COURT: All right. I think that the following
13 schedule would both allow the State to take the deposition of
14 Ms. Marks, which seems to me important and whatever -- everyone
15 has provided information as to why it didn't happen before.
16 And I understand both perspectives. And I'm not reaching a
17 judgment about it at all. I'm just trying to move forward.

18 But I think this schedule is something that allows
19 the State to move forward and also takes into account the
20 circumstances if the State files its motion by March 31st. The
21 plaintiffs -- I would make the plaintiffs' response on Friday,
22 April 22nd and the State's response due on May 6th, which is
23 giving the State for reply an extra week plus days than it had
24 in the original schedule you-all had agreed upon. Originally
25 the reply was going to be due within a week.

1 Here, it is going to be due on a week and a day. May
2 the 6th is, of course, also at the end of the -- it gives you
3 the few days post when Judge Jones is at the Eleventh Circuit
4 conference and it is an extra week. So that's -- and then it
5 is prior to the birth of the child -- of the baby too.

6 MR. CROSS: Your Honor, sorry. Do you mind just
7 giving those dates one more time?

8 THE COURT: March 31st for the motion to be filed.
9 April 22nd for the response to be filed. May 6th for the
10 reply.

11 MR. CROSS: Your Honor, I guess the only -- this is
12 David. The only concern I would raise is that we're getting
13 three weeks to respond and they are getting two weeks for a
14 reply. And so you are doubling the time that they have for
15 reply.

16 THE COURT: I am doubling it. It is an extra week.
17 But he has -- they have their team completely in trial. I
18 understand that they normally -- you usually have in our
19 district two weeks to reply.

20 So, you know, you-all cut it because you were trying
21 to get this done. And I understand that. But realistically,
22 even if they had one person who is not going to be involved in
23 the Fair Fight trial, the reality is that this is a taxing
24 situation that they are facing.

25 And maybe the trial will be done sooner. But that

1 seems to me the best I can do to make -- adjusting to all of
2 the peculiar circumstances.

3 And I think it is true that I have tried to also
4 adjust to the plaintiffs' circumstances as well at times. So
5 it is -- this is my view.

6 While I'm taking the motion for the stay also under
7 advisement obviously, I'm not inclined to grant it or else I
8 wouldn't have spent time trying to figure this out. But I'll
9 take it under advisement.

10 I would like -- if there is something -- I will
11 consider your argument in opposition based on what you have
12 argued. If you think you want to do anything as an addendum to
13 what you have provided, then let me know when you can provide
14 it by.

15 MR. BROWN: This is Bruce Brown from the Coalition
16 standpoint -- and, David, I don't want to speak for you. But I
17 think we have presented our arguments with respect to the stay
18 and the -- particularly given, you know, our -- the only thing
19 I would add is that our agreement to a stay sort of goes out
20 the window with the extension. Right? I mean, it was one or
21 the other for the purposes of our position.

22 And so we do not see the utility of a stay under
23 these circumstances. And given that we have the deposition
24 coming up this week, we would probably forgo filing a formal
25 brief on the issue and just request that it be denied.

1 MR. CROSS: Your Honor, this is David Cross. Same
2 for us, especially given Your Honor's leaning against granting
3 it. I don't want to burden you with more paper.

4 THE COURT: All right.

5 MR. CROSS: Your Honor, there was one other issue, if
6 we're done with that.

7 THE COURT: All right.

8 MR. CROSS: I don't know if you saw, Your Honor,
9 there was a motion that I sent to your clerks and to Mr. Martin
10 today.

11 The only reason I flag it is just to make sure Your
12 Honor is aware of it. We haven't had to confer anything yet.
13 But there is a plaintiff in a case that would put our expert in
14 an untenable position were they to prevail on their motion to
15 compel. And they are arguing to the court in that case that
16 that judge can order -- another federal judge in another
17 district can order Dr. Halderman to produce the report and he
18 would have to comply with that. And we will keep you alerted
19 to that.

20 THE COURT: All right. All right.

21 MR. CROSS: To be honest, I don't even know what to
22 do. I'm just worried that he's going to end up in a position
23 with conflicting orders. And I don't know if we come back to
24 you or we go there. I have never been in that situation.

25 I wanted to flag it for you, and hopefully we don't

1 end up there.

2 THE COURT: I hope not.

3 I want to ask counsel for the plaintiff if there is
4 any -- I really would prefer -- because all of this has come up
5 at very much the 11th hour, the issue of the stay, if there is
6 any law that you want me to look at, I would prefer -- you
7 know, basically to be able -- I mean, I have tried because I
8 have been able to get hold of you this afternoon that we would
9 actually proceed to try to pragmatically decide how we're going
10 forward.

11 But I do feel like I need to look at the stay motion
12 still. And so that if there is any -- I understand what your
13 positions are from sort of the law of this case. And I
14 understand the State's position.

15 But if the plaintiffs are able to provide any
16 authority at all, even if this is just a letter -- a one-page
17 letter brief, because I'm not looking for more than that, I
18 would consider it. And I think it would be helpful.

19 But if you are not able to do it, that is fine. But
20 I think it would be helpful to the Court. And it is a very
21 busy time of the year for us as well.

22 MR. CROSS: Of course. Would it be okay -- yeah. If
23 Mr. Brown and I can talk about that, we likely can get you
24 something next week, if that works.

25 THE COURT: All right. That is fine. But the

1 question is: Could you advise -- because I don't want the
2 State working away on this motion for summary judgment if they
3 are -- if there is any chance that I'm going to stay something.

4 So do you think that -- I'm going to -- I don't know
5 when the likely deposition is. And I know that Mr. Brown is
6 going to have to be spending time with his client preparing for
7 it.

8 But I think just from a pragmatic perspective I would
9 really need such a letter brief -- it doesn't have to be
10 beautiful. But it can be really just a few cases to consider,
11 two paragraphs. Think short. And if we were able to have it
12 Tuesday morning, that would be very helpful for us to be able
13 to actually address it.

14 I don't want to give short shrift to this, and I also
15 don't like decision-making on the fly as much as we -- either.
16 So to try to move this forward --

17 MR. BROWN: Your Honor --

18 THE COURT: -- I still think I --

19 MR. BROWN: Your Honor, the only -- Your Honor, the
20 only idea that I would have is whether the State would just go
21 ahead and drop the motion since they -- if you read their
22 brief, I read it as a motion for an extension. And the stay
23 was sort of an afterthought because what they really needed was
24 an extension.

25 They got it. So maybe the State would consider

1 withdrawing the motion to stay to save Your Honor the trouble
2 of denying it.

3 THE COURT: Well, I assume Mr. Miller is going to
4 want to talk with his co-counsel. Please do so. All of you
5 talk to your respective co-counsel and communicate with each
6 other about that. All right? And figure out a schedule.

7 You know, I can get off and you can talk among
8 yourselves if you -- or else just get off and call each other.

9 MR. BROWN: Your Honor, we can report to you if the
10 State does withdraw. And if they do not, we will have
11 something to you by Tuesday morning. This is Bruce Brown.

12 THE COURT: All right. Thank you very much.

13 MR. CROSS: Your Honor, this is David Cross. I
14 apologize. There is one other issue that occurs to me that we
15 should address on the discovery.

16 We had taken the position that we would not pursue
17 further 30(b)(6) discovery at this stage. But we haven't
18 really gotten a commitment from the State on that.

19 Our compromise proposal was, as long as they are
20 going to be bound by the testimony that they have put in from
21 the 30(b)(6) witnesses, meaning we're not going to seek new
22 testimony from anyone from the Secretary's office, new
23 evidence, new allegations, new facts, then we'll let that sit.

24 But I think we need that commitment. Because if we
25 don't have that, then we may need to figure out whether we're

1 going to use this additional time to get testimony from
2 knowledgeable witnesses, which I would prefer not to spend time
3 and money on.

4 But I don't know if you can get that commitment
5 today. It sounds -- their filing suggested they were kind of
6 close to that. So I'm not sure.

7 THE COURT: Well, you can all discuss that. And the
8 alternative is that you preserve it if you can't come to an
9 agreement by motion to compel that the 30(b)(6) witness was not
10 properly prepared.

11 MR. CROSS: Okay. Thank you, Your Honor.

12 MR. MILLER: Your Honor, this is Carey Miller. If I
13 may just pose two clarifying questions on the schedule.

14 I mentioned earlier our intent to move for summary
15 judgment kind of separately as to Coalition and as to Curling.
16 We would intend to file one set of statement of material facts
17 with respect to the -- well, I guess possibly two sets. But
18 don't intend to necessarily make extra work.

19 But it is not entirely clear to me under the rules if
20 that will require leave. And so I wanted to raise that issue.

21 THE COURT: If you have a consolidated statement of
22 material facts, that is acceptable and you have leave to do
23 that.

24 MR. MILLER: Okay. Thank you, Your Honor.

25 The second issue would be -- one thing that we raised

1 in our filing concerned the Coalition for Good Governance is
2 associational standing issue. At this juncture with the
3 schedule that the Court is contemplating, we'll simply move
4 forward with our option B for exclusion to the extent
5 necessary.

6 And my question for the Court would be: Does the
7 Court prefer that to be filed as like it was a *Daubert* or
8 dispositive motion or to proceed in another manner?

9 THE COURT: Well, I would like to hear Mr. Brown in
10 this connection.

11 MR. BROWN: Your Honor, I must confess: I don't
12 know -- I heard what he said, and I can repeat it, but I do not
13 understand what he is saying.

14 Carey --

15 MR. MILLER: Your Honor, I'm happy to clarify it. It
16 is in our -- we discussed it in our filing. I was trying to
17 find the page here.

18 But it is Page -- Page 14 on to 15. It would be with
19 respect to the late disclosed associational standing witnesses.
20 We proposed that we would either proceed with their depositions
21 or would move to exclude them.

22 As Mr. Cross raised, our proposal would be we'll move
23 to exclude them. I'm not asking for Mr. Brown's consent on
24 that. But Mr. Brown could continue to rely on the four
25 identified individual member plaintiffs for purposes of his

1 associational standing, given that those individuals were
2 timely disclosed and were deposed.

3 MR. BROWN: Your Honor, we're going to oppose all of
4 that. We're giving the State defendants Ms. Marks after they
5 waited a month, one week to schedule her deposition. They have
6 never asked for a date for any of those 14 witnesses. And they
7 are out of time on those.

8 I mean, they -- okay, they get an extension on their
9 brief. But we do not intend to sit through 14 depositions of
10 members that they could have been deposing for the last six
11 weeks. We do not have the resources.

12 And with respect, we do not believe that given how
13 the Court has accommodated the State's scheduling difficulties
14 and the constraints on the State's resources we strongly
15 believe that they have waived their right to take these 14
16 depositions.

17 And, furthermore, what they are saying is that they
18 need to take these witnesses' depositions to eliminate an issue
19 of fact for all 18 association members, like they are going to
20 do that. I would suggest --

21 MR. MILLER: Your Honor --

22 MR. BROWN: -- that they haven't taken these
23 depositions because they are just a very low priority. And
24 that would be smart for them to be a very low priority. They
25 have had the names since February 2nd, and they have not asked

1 for a single one of them.

2 And, Your Honor, we don't -- we can't drop
3 everything -- I mean, we have other cases and other trials too.
4 We're not in Fair Fight. But we also don't have 16 lawyers on
5 the pleadings. And they have waived using the discovery --
6 they could have started this discovery when they were trying to
7 take the deposition of Ebenezer Baptist Church back in 2019.
8 And enough is enough.

9 MR. MILLER: Your Honor, just to clarify, I don't
10 expect that there is going to be some sort of stipulation. My
11 request was presuming that would, in fact, be Mr. Brown's
12 response as to when the Court would prefer a motion to that
13 effect.

14 THE COURT: Well, if you're going to do it, you can
15 do it in the context of your motion for summary judgment. I
16 mean, I don't -- you haven't noticed a deposition. That is the
17 thing.

18 So, you know, you-all obviously could come -- I don't
19 know that you need every single one of those 16, by any means.
20 They have offered you four that relate to associational
21 standing -- is that right? -- already?

22 MR. MILLER: Your Honor, the --

23 **(Unintelligible cross-talk)**

24 MR. BROWN: That --

25 MR. MILLER: -- individuals were disclosed on

1 February 2.

2 THE COURT: I understand that. I'm just saying: Are
3 there -- you have taken the deposition of four members of the
4 Coalition who say their associational rights have been
5 infringed or burdened?

6 MR. MILLER: Your Honor, those are the four
7 individual member plaintiffs, Ms. Digges, Ms. Missett -- yes,
8 those are the same -- those are the four that we have taken.
9 Yes.

10 THE COURT: Well, I don't know that this is a --
11 frankly a question of how many people somebody has to offer up
12 in order for associational -- an organization. But, you know,
13 if you think there is something terribly different about the
14 other individuals, you-all could easily agree on depositions
15 not to exclude two hours of another two or three people.

16 But I'm not saying it is essential. But this is
17 (inaudible) in my perspective. But if the State doesn't want
18 to limit itself to a two-hour deposition for two or three
19 people --

20 **(Unidentified interruption in proceedings)**

21 THE COURT: Anyway, I'm just going to -- that is my
22 view about this. I'm not sure it is essential in any way. But
23 there are ways of dealing with this with two or three people.
24 But there is no reason for 14 people or 16 people to have to
25 give depositions in my view.

1 But that is -- but having a few more, you know, for
2 the short depositions with the time I've given the State, it
3 certainly -- if you decline to do that, then that is your
4 problem.

5 MR. MILLER: Okay. Thank you, Your Honor.

6 THE COURT: All right. All right. I look -- I'm
7 going to look to hear from the plaintiffs about your response
8 to the stay issues.

9 And I realize there is not -- in terms of the Court
10 of Appeals, it is not as if the Coalition -- the Curling
11 plaintiffs as opposed to Coalition plaintiffs are actually in
12 an Eleventh Circuit proceeding technically. So it is a little
13 bit of a different position.

14 But I still would like to hear about -- they could
15 still -- they still asked for a stay, and I still think an
16 appropriate short response is appropriate for the record.

17 Thank you. And I think we've covered everything.
18 And I'll address other matters separately.

19 Thank you. We're adjourned.

20 MR. MILLER: Thank you, Your Honor.

21 **(The proceedings were thereby concluded at 5:08**
22 **P.M.)**

23

24

25

C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 52 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 14th day of March, 2022.



SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT